

JUN 05 2003

at 3 o'clock and 50 min. P.M.
WALTER A. Y. H. CHINN, CLERK

RALPH F. BOYD, JR.
Assistant Attorney General
SHANETTA Y. BROWN-CUTLAR
ELIZABETH JOHNSON
VERLIN DEERINWATER
DAVID DEUTSCH
Attorneys
Special Litigation Section
U.S. Department of Justice
Civil Rights Division
601 D. Street N.W., Room 5928
Washington, D.C. 20035-6400
E-mail: verlin.deerinwater@usdoj.gov

MARK J. BENNETT
Attorney General
State of Hawaii
HEIDI M. RIAN
ANN V. ANDREAS
BARBARA A. FABREY
Deputy Attorneys General
465 South King Street, Rm 200
Honolulu, Hawaii 96813
Telephone: (808) 587-3050
E-mail: Ann.B.Andreas@hawaii.gov

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii
MICHAEL CHUN
Assistant U.S. Attorney
P. O. Box 50183
Room 6100 PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone No. (808) 541-2850

PAUL M. AUCOIN
Special Deputy Attorney General
AuCoin, DuPont, Hetterscheidt
& Younkin LLP
495 South High St., Suite 250
Columbus, Ohio 43215-4503
Telephone No. (614) 464-4100
E-mail: PMAucoin@aol.com

Attorneys for Defendants

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
STATE OF HAWAII, et al.)
)
Defendants.)

CIVIL NO. 91-00137 DAE/KSCC
JOINT STIPULATION FOR
PARTIAL DISMISSAL WITHOUT
PREJUDICE OF CLAIMS
REGARDING CHILDREN AND
ADOLESCENT RESIDENTIAL

JOINT STIPULATION FOR PARTIAL DISMISSAL
WITHOUT PREJUDICE OF CLAIMS REGARDING
CHILDREN AND ADOLESCENT RESIDENTIAL SERVICES

Pursuant to Fed. R. Civ. P. 41(a)(2), the parties, the United States of America, Plaintiff ("United States"), and the State of Hawaii, et al., Defendants ("the State" or "Defendants"), hereby submit this Joint Stipulation For Partial Dismissal Without Prejudice of Claims Regarding Children and Adolescent Residential Services ("CARS") and in doing so state the following:

1. The United States filed this action on March 7, 1991, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, for the purpose of protecting the constitutional rights of the patients of the Hawaii State Hospital ("HSH") and children and adolescents residing in the CARS programs.
2. On September 20, 1991, following negotiations between the parties, the United States District Court for the District of Hawaii entered a Settlement Agreement as an order of the court, settling all claims to the action.
3. The Settlement Agreement required the Defendants to undertake remedial action to achieve and maintain constitutional conditions of confinement, care and treatment for HSH patients and CARS residents.
4. In 1991, the State's adolescent program was housed on the campus of HSH. Services for children were provided at Leahi Hospital ("Leahi") Children's Unit.
5. During the pendency of this action, the State closed the adolescent program at the HSH campus, as well as the Children's Unit at Leahi and contracted for CARS programs.

6. The State, through, the Child and Adolescent Mental Health Division ("CAMHD") of the Hawaii Department of Health, contracted with Kahi Mohala Behavioral Health Hospital ("Kahi") for the provision of non-acute residential mental health services to children and adolescents.

7. The State also contracted with Castle Medical Center ("CMC") and The Queen's Medical Center Family Treatment Center ("Queen's FTC") for non-acute residential services for adolescents.

8. Currently, the CARS programs at Kahi and Queen's FTC comprise the CARS programs subject to the court orders in this case.

9. Since entry of the 1991 Settlement Agreement, the United States monitored vigorously the status of the State's efforts to comply with the terms of the Settlement Agreement.

10. As a result of these monitoring efforts and based upon the State's failure to meet certain requirements of the Settlement Agreement, plans of correction were developed and agreed to for CAMHD and CARS programs at Kahi and CMC, which plans of correction were entered as orders of the Court on February 13, 1998.

11. Shortly thereafter, CAMHD closed its CARS program at CMC.

12. A Stipulation further defining the scope of the court orders governing the CARS programs was entered as an order of the Court on November 19, 1998.

13. The United States conducted monitoring tours of the CARS programs at Kahi and Queen's FTC in April and September, 2002. The United States, accompanied by its expert consultants, toured the facilities, examined relevant records, and spoke with staff and residents.

14. Based on the results of the tours conducted in 2002, and information

subsequently provided by the State, the United States finds the CARS programs at Kahi and Queen's FTC to be in compliance with the requirements of the Settlement Agreement and other court orders regarding CARS.

15. Further, it is the opinion of the United States that major reasons for the success of the CARS programs in obtaining compliance with the court orders are:

- a. The intensive efforts employed by CAMHD to both monitor conditions at the CARS programs and to employ corrective action when services failed to meet the expectations of CAMHD; and
- b. CAMHD's successful creation of alternative programs to provide early intervention services and to assist children and adolescents and their families after the residents leave the CARS programs.

16. The State, through CAMHD agrees to continue its monitoring efforts of the CARS programs to ensure provision of constitutional conditions at the CARS programs. The parties agree, however, that the State is relieved from its obligation to report monthly to the United States on CARS.

17. Until the complete dismissal of this action, the State agrees to receive, review and address as appropriate, concerns regarding the CARS programs at Kahi and Queen's FTC, or successor contractors, referred to it by the United States.

18. Defendants acknowledge their continuing obligations and responsibilities to adhere to the mandates of all previous Court Orders entered in this action other than those related to CARS; that is, all mandates related to services for adults.

19. This Stipulation may be signed and dated in counterparts.

THEREFORE, based upon the foregoing and upon agreement of the parties, the parties respectfully request the Court to enter an order to:

Dismiss, without prejudice, all claims regarding Children and Adolescent Residential Services; and terminate the portions of the court orders in this case that govern CARS. A proposed Order is attached.

Dated: Honolulu, Hawaii, 3 June 2003.

FOR THE STATE OF HAWAII:

FOR THE UNITED STATES:

MARK J. BENNETT
Attorney General

RALPH F. BOYD, JR.
Assistant Attorney General


HEIDI M. RIAN
ANN V. ANDREAS
BARBARA A. FABREY
Deputy Attorneys General


SHANETTA Y. BROWN-CUTLAR
ELIZABETH JOHNSON
VERLIN DEERINWATER
DAVID DEUTSCH

Attorneys for Plaintiff


PAUL M. AuCOIN
Special Deputy Attorney General

Attorneys for Defendants

3 June 2003
DATE

June 3, 2003
DATE

United States v. State of Hawaii, et al., Civil No. 91-00137 DAE/KSCC,
Joint Stipulation for Partial Dismissal without Prejudice of Claims Regarding
Children and Adolescent Residential Services

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CIVIL NO. 91-00137 DAE
)
)
Plaintiff,) ORDER
)
vs.)
)
STATE OF HAWAII, et al.)
)
Defendant.)
)
_____)

ORDER

Upon joint stipulation of the parties and for good cause shown, the Court hereby dismisses without prejudice all claims regarding the Children and Adolescent Residential Services ("CARS"), and terminates all of the provisions pertaining to CARS set forth in the orders entered in this action including:

- 1) Settlement Agreement, entered September 19, 1991;
- 2) Stipulation and Order, entered February 13, 1998; Attachments C, D, E;
- 3) Stipulation and Order Regarding Children and Adolescent Residential Services, entered November 19, 1998;
- 4) Order, entered March 18, 1999;
- 5) Order Setting Powers of Special Monitor, entered January 7, 2000; and
- 6) Order of Reference, entered June 19, 2001.

This dismissal is based upon the parties' agreement that the State of Hawaii through the Child and Adolescent Mental Health Division ("CAMHD") of the

Hawaii Department of Health shall continue its monitoring efforts of the CARS programs at Kahi Mohala Behavioral Health Hospital and The Queen's Medical Center Family Treatment Center ("the CARS programs"), or successor contractors; and, shall receive, review and address, as appropriate, concerns about the CARS programs referred to CAMHD by the United States during the pendency of this action. Defendants are relieved, however from their obligation to report monthly to the United States on CARS.

Defendants acknowledge their continuing obligations and responsibilities to adhere to the mandates of all previous Court Orders entered in this action other than those related to CARS; that is all mandates related to services for adults.

DATED: Honolulu, Hawaii, JUN 05 2003.

DAVID ALAN EZRA

DAVID A. EZRA
CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

United States v. State of Hawaii, et al., Civil No. 91-00137 DAE/KSCC,
Joint Stipulation for Partial Dismissal without Prejudice of Claims Regarding
Children and Adolescent Residential Services

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CIVIL NO. 91-00137 DAE
)
Plaintiff,) CERTIFICATE OF SERVICE
)
vs.)
)
STATE OF HAWAII, et al.)
)
Defendants.)
)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Stipulation For Partial
Dismissal Without Prejudice of Claims Regarding Children and Adolescent
Residential Services was served by United States Mail, postage pre-paid on
June 5, 2003, and by facsimile to the following:

EDWARD H. KUBO, JR.
United States Attorney
MICHAEL CHUN
Assistant U.S. Attorney
P. O. box 50183
Room 6100 PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Fax. No.: (808) 541-2958

RALPH F. BOYD, JR.
SHANETTA Y. BROWN-CUTLAR
ELIZABETH JOHNSON
VERLIN HUGHES DEERINWATER
DAVID DEUTSCH
Attorneys
U.S. Department of Justice
Civil Rights Division
P. O. Box 66400, Room 5928
Washington, D.C. 20035
Fax No.: (202) 514-6273

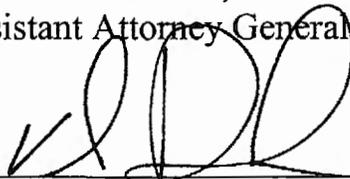
DATED: Honolulu, Hawaii, June 5, 2003.

MARK J. BENNETT
Attorney General

RALPH F. BOYD, JR.
Assistant Attorney General

Ann V. Andreas

HEIDI M. RIAN
ANN V. ANDREAS
BARBARA A. FABREY
Deputy Attorneys General



SHANETTA Y. BROWN-CUTLAR
ELIZABETH JOHNSON
VERLIN DEERINWATER
DAVID DEUTSCH
United States Department of Justice

Ann V. Andreas

for PAUL M. AUCOIN
Special Deputy Attorney General

Attorneys for Plaintiff

Attorneys for Defendants